

1970

c 474 Upholstered and Stuffed Articles Act

Ontario

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CHAPTER 474

The Upholstered and Stuffed Articles Act

1.—(1) In this Act,

Interpre-
tation

- (a) “Department” means the Department of Financial and Commercial Affairs;
- (b) “Director” means the Director of the Consumer Protection Division of the Department of Financial and Commercial Affairs;
- (c) “manufacturer” means a person who inserts and covers stuffing in any article or part thereof in the manufacture of an upholstered or stuffed article or any part thereof;
- (d) “Minister” means the Minister of Financial and Commercial Affairs;
- (e) “person” means an individual, an association of individuals, a partnership or a corporation and includes an agent of any of them;
- (f) “prescribed” means prescribed by the regulations;
- (g) “registered” means registered under this Act;
- (h) “Registrar” means the Registrar of Upholstered and Stuffed Articles;
- (i) “regulations” means the regulations made under this Act;
- (j) “renovator” means a person who renovates, repairs or alters an upholstered or stuffed article;
- (k) “second-hand article” means an upholstered or stuffed article that has been purchased from a retailer but does not include an upholstered or stuffed article returned to the retailer without use and with the original label attached;
- (l) “second-hand material” means material that has been used other than in a manufacturing process;
- (m) “stuffing” means any material used for padding, filling or cushioning, that is meant to be enclosed by a covering;
- (n) “Tribunal” means The Commercial Registration Appeal Tribunal established under *The Department of Financial and Commercial Affairs Act*;

R.S.O. 1970,
c. 113

- (o) "upholstered or stuffed article" means an article any part of which contains stuffing. 1968, c. 140, s. 1 (1); 1968-69, c. 135, s. 1.

Idem (2) For the purposes of this Act and the regulations, an upholstered or stuffed article, other than one received for renovation and labelled under subsection 3 of section 25 or section 30, shall be deemed to be offered for sale while it is in the possession of or on the premises of a person carrying on business as a manufacturer, wholesaler, wholesaler-distributor or retailer. 1968, c. 140, s. 1 (2).

Application **2.** Sections 4, 25, 26 and 28 do not apply in respect of the manufacture, labelling and sale,

- (a) of shoulder pads and trimmings in articles of clothing;
- (b) of upholstery or articles manufactured as part of a vehicle or an aeroplane; or
- (c) of life-saving equipment that bears a stamp or label of approval of the Department of Transport of the Government of Canada. 1968, c. 140, s. 2.

Registrar **3.—(1)** There shall be a Registrar of Upholstered and Stuffed Articles who shall be appointed by the Lieutenant Governor in Council.

Duties of Registrar (2) The Registrar may exercise the powers and shall perform the duties conferred or imposed upon him by or under this Act under the supervision of the Director. 1968-69, c. 135, s. 2.

Registration **4.** No person shall carry on business as a manufacturer or as a renovator unless he is registered under this Act. 1968, c. 140, s. 3 (1).

Granting of registration **5.—(1)** Subject to subsection 2, the Registrar shall grant registration to any person who applies therefor in the prescribed form and pays the prescribed fee. 1968, c. 140, s. 4 (1).

Refusal of registration (2) The Registrar may refuse to grant registration where,

- (a) the applicant;
- (b) a member of the applicant, where the applicant is an association or partnership; or
- (c) an officer or director of the applicant, where the applicant is a corporation,

was a registrant, or member, officer or director of a registrant, whose registration has been cancelled, unless the Registrar is satisfied that material circumstances have changed. 1968-69, c. 135, s. 3.

6. Every registrant shall within five days after the event notify the Registrar in writing of,

Notice of
changes

- (a) any change in his address for service; and
- (b) any change in the officers in the case of a corporation or of the members in the case of an association of individuals or a partnership. 1968, c. 140, s. 6 (2).

7.—(1) Where the Registrar receives a complaint alleging the non-compliance of a registrant with this Act or the regulations and so requests in writing, the registrant shall furnish the Registrar with such information respecting the matter complained of as the Registrar requires. 1968, c. 140, s. 7 (1).

Investiga-
tion of
complaints

(2) The request under subsection 1 shall indicate the general nature of the inquiry involved. 1968-69, c. 135, s. 6 (1).

Request to
indicate
nature of
inquiry
Idem

(3) For the purposes of subsection 1, the Registrar or any person designated in writing by him may at any reasonable time make an inspection in relation to the complaint. 1968, c. 140, s. 7 (2); 1968-69, c. 135, s. 6 (2).

8. Where the Registrar has reasonable and probable grounds to believe that any person is acting as a manufacturer or renovator while unregistered, the Registrar or any person designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 4. 1968-69, c. 135, s. 7, *part*.

Inspection

9.—(1) Upon an inspection under section 7 or 8, the person inspecting,

Powers on
inspection

- (a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person being inspected; and
- (b) may, upon giving a receipt therefor, remove any material referred to in clause *a* that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

(2) Any copy made as provided in subsection 1 and purporting to be certified by an inspector is admissible in evidence in any

Admissibil-
ity of copies

action, proceeding or prosecution as *prima facie* proof of the original. 1968-69, c. 135, s. 7, *part*.

Suspension
and
revocation

10.—(1) The Tribunal may, upon the application of the Registrar, suspend or revoke a registration where the registrant has contravened this Act or the regulations and has refused to comply with this Act or the regulations after being requested to do so by the Registrar in writing.

Voluntary
cancellation

(2) Notwithstanding subsection 1, the Registrar may cancel a registration upon the request in writing of the registrant in the prescribed form surrendering his registration. 1968-69, c. 135, s. 8.

Hearing by
Tribunal

11.—(1) Where the Registrar refuses to issue a registration or applies to the Tribunal to suspend or revoke a registration, he shall serve notice upon the applicant or registrant, together with written reasons for his refusal or for the proposed suspension or revocation, and the applicant or registrant may, by written notice served upon the Registrar and the Tribunal within fifteen days after the service of the notice of refusal or proposed suspension or revocation, require a hearing by the Tribunal.

Notice of
hearing

(2) The Tribunal shall fix a date for the hearing and shall serve notice of the hearing on the parties at least ten days before the day fixed.

Idem

(3) The notice of hearing shall contain,

- (a) a statement of the time and place of the hearing;
- (b) a statement of the statutory power under which the hearing is being held;
- (c) a reference to the rules of procedure applicable to the hearing;
- (d) a concise statement of the issues; and
- (e) a statement that, if a party who has been duly notified does not attend at the hearing, the Tribunal may proceed in his absence and he is not entitled to notice of any further proceedings. 1968, c. 135, s. 9, *part*.

Parties

12.—(1) The Registrar, the applicant or registrant and any other person specified by the Tribunal are parties to the hearing.

Failure to
attend

(2) If a person who has been duly notified of a hearing does not attend, the Tribunal may proceed in his absence. 1968-69, c. 135, s. 9, *part*.

Adjourn-
ment

13.—(1) A hearing may be adjourned from time to time by the Tribunal on reasonable grounds,

- (a) on its own motion; or

(b) on the motion of any party to the hearing.

(2) The Tribunal may, in the prescribed form, command the attendance before it of any person as a witness. Subpoenas

(3) The Tribunal may require any person, Oaths

(a) to give evidence on oath at a hearing; and

(b) to produce such documents and things as the Tribunal requires.

(4) An applicant or registrant giving evidence under oath before the Tribunal shall be advised of his right to object to answer any question under section 9 of *The Evidence Act* and section 5 of the *Canada Evidence Act*. Objection
re self-in-
crimination
R.S.O. 1970,
c. 151
R.S.C. 1952,
c. 307

(5) The Tribunal may admit evidence not given under oath. Idem

(6) Any person who, without lawful excuse, Offences

(a) on being duly summoned as a witness before the Tribunal, makes default in attending;

(b) being in attendance as a witness before the Tribunal refuses to take an oath legally required by the Tribunal to be taken, or to produce any document or thing in his power or control legally required by the Tribunal to be produced by him, or to answer any question to which the Tribunal may legally require an answer; or

(c) does any other thing that would, if the Tribunal had been a court of law having power to commit for contempt, have been contempt of that court,

is guilty of an offence punishable under subsection 7.

(7) The Tribunal may certify an offence under subsection 6 to the High Court and that court may thereupon inquire into the offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, punish or take steps for the punishment of that person in like manner as if he had been guilty of contempt of the court. Enforce-
ment
1968-69, c. 135, s. 9, *part*.

14. Any party may be represented before the Tribunal by counsel or agent. 1968-69, c. 135, s. 9, *part*. Right of
party to
counsel

15.—(1) Any witness may be represented before the Tribunal by counsel or agent, but at the hearing the counsel or agent may only advise the witness and state objections under the provisions of the relevant law. Right of
witness to
counsel

(2) Where a hearing is *in camera*, a counsel or agent for a witness shall be excluded except when that witness is giving evidence. 1968-69, c. 135, s. 9, *part*. Exclusion
of counsel

Right of
parties at
hearing

16. At a hearing before the Tribunal, any party may call and examine his witnesses, cross-examine opposing witnesses and present his arguments and submissions. 1968-69, c. 135, s. 9, *part.*

Hearings
to be open
to public;
exceptions

17.—(1) All hearings shall be open to the public except where the Tribunal finds that,

- (a) public security may be involved; or
- (b) intimate financial or personal circumstances of any person may be disclosed,

in which case the Tribunal shall hold the hearing as to any such matters *in camera*.

Idem

(2) Notwithstanding the exceptions mentioned in clauses *a* and *b* of subsection 1, the Tribunal may, if in its opinion the public interest so requires, proceed without regard to such exceptions. 1968-69, c. 135, s. 9, *part.*

Release of
exhibits

18. Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to him by the Tribunal within a reasonable time after the matter in issue has been finally determined. 1968-69, c. 135, s. 9, *part.*

Specialized
knowledge

19.—(1) The Tribunal may consider in reaching its decision any facts and information that are within its knowledge and that have not been introduced in evidence.

Notice

(2) The Tribunal shall notify all parties to a proceeding of any facts or information referred to in subsection 1 and shall, before reaching its decision, give the parties an opportunity to contest before it any such facts or information.

Contents
and service
of notice

(3) The Tribunal shall cause a notice containing a statement of such facts or information to be served upon all the parties. 1968-69, c. 135, s. 9, *part.*

Record

20. All oral evidence received by the Tribunal shall be taken down in writing and together with,

- (a) the notice of hearing;
- (b) any rulings or orders made in the course of the proceedings of the Tribunal;
- (c) any written submissions received by the Tribunal; and
- (d) the decision and the reasons therefor,

form the record. 1968-69, c. 135, s. 9, *part.*

Decision of
Tribunal

21.—(1) The Tribunal may, after the hearing,

- (a) where the hearing is an appeal from a decision of the Registrar, by order confirm or alter the decision of the Registrar or direct the Registrar to do any act the Registrar is authorized to do under this Act and as the Tribunal considers proper and for this purpose the Tribunal may substitute its opinion for that of the Registrar; or
- (b) where the hearing is an application for suspension or revocation of a registration, dismiss the application or order that the registration be suspended or revoked,

and the Tribunal may attach such terms and conditions to its order or to the registration as it considers appropriate.

(2) The final decision of the Tribunal, including the reasons therefor, shall be in writing. Decision to be in writing

- (3) The reasons for the final decision shall contain, Contents of reasons for decision
 - (a) the findings of fact on the evidence and any information or knowledge used in reaching the decision;
 - (b) any agreed findings of facts; and
 - (c) the conclusions of law based on the findings mentioned in clauses *a* and *b*.

(4) The Tribunal shall cause to be served on the parties a copy of its final decision, including the reasons therefor, and a notice stating the rights of appeal. 1968-69, c. 135, s. 9, *part*. Notice of decision

22. A certified copy of the final decision of the Tribunal, exclusive of the reasons therefor, may be filed in the office of the Registrar of the Supreme Court whereupon it shall be entered in the same way as a judgment or order of that court and is enforceable as such. 1968-69, c. 135, s. 9, *part*. Enforcement of decisions

23.—(1) Any party to the hearing before the Tribunal may appeal from the decision of the Tribunal to the Court of Appeal and the practice and procedure as to the appeal and proceedings incidental thereto are the same *mutatis mutandis* as upon an appeal from the High Court. Appeal to Court of Appeal

(2) The Minister may designate counsel to assist the court upon the hearing of an appeal under this section. Counsel

(3) An appeal under this section may be made on questions of law or fact or both and the court may confirm or alter the decision of the Tribunal or direct the Registrar or the Tribunal to do any act the Registrar or the Tribunal is authorized to do under this Act and as the court considers proper, and the court may substitute its opinion for that of the Registrar and the Tribunal and may exercise the same powers as it exercises on an appeal Decision of court

from a judge of the High Court sitting without a jury. 1968-69, c. 135, s. 9, *part*.

Stay

24. An order of the Tribunal refusing to renew or suspending or revoking a registration shall take effect immediately, but the Tribunal may grant a stay until the order becomes final. 1968-69, c. 135, s. 9, *part*.

Labelling:
on manufac-
ture and
renovation

25.—(1) Every manufacturer and every renovator shall, immediately upon its manufacture or receipt for renovation, affix to a conspicuous part of the main body of the upholstered or stuffed article a label in the prescribed form.

second-hand
articles

(2) Every dealer in second-hand articles shall, immediately upon their receipt, affix to a conspicuous part of each second-hand article in his possession, a label in the prescribed form.

receipt for
renovation

(3) Every person who receives an upholstered or stuffed article for the purpose of renovation shall, where such work is to be performed by someone other than that person or his employee, immediately upon its receipt, affix to a conspicuous part of the main body of the article a label in the prescribed form. 1968, c. 140, s. 14.

Sale

26.—(1) No person shall sell or offer for sale, whether by auction or otherwise, an upholstered or stuffed article that does not bear a label complying with the regulations and securely affixed to a conspicuous part of the main body of the article.

Exception

(2) Subsection 1 does not apply to the sale or offering for sale by a householder of his own household articles on his own premises. 1968, c. 140, s. 15.

Removal of
labels

27. No person shall remove, deface or alter or attempt to remove, deface or alter any label affixed to an article before the article to which it is affixed is sold by retail and delivered or in the case of renovations is returned to the owner. 1968, c. 140, s. 16.

Sale of
articles
of unreg-
istered
manufac-
turer

28. No person shall sell or offer for sale, whether by auction or otherwise, an upholstered or stuffed article, other than a second-hand article, that has not been manufactured by a manufacturer who is registered under this Act, or manufactured in a province designated by the regulations. 1968, c. 140, s. 17.

Second-
hand
material

29.—(1) No person shall use second-hand material as stuffing in the manufacture of an upholstered or stuffed article or add second-hand material as stuffing in its renovation.

Unclean
material

(2) No person shall use material that contains vermin or is unclean in the manufacture or renovation of any upholstered or stuffed article.

(3) No person shall use feathers or feather products in the manufacture or renovation of an upholstered or stuffed article unless the feathers or feather products have first been processed in the manner prescribed by the regulations. 1968, c. 140, s. 18. Feathers

30.—(1) No person shall sell or offer for sale an upholstered or stuffed article that, Unsanitary stuffing

- (a) has been in contact with a person suffering from a communicable disease;
- (b) is so soiled or in such condition as is likely to affect adversely the health of any person; or
- (c) contains vermin,

unless the article has been sterilized or disinfected in the manner prescribed by the regulations.

(2) Where an upholstered or stuffed article to which subsection 1 applies is offered for sale by a dealer and the Registrar or the local medical officer of health believes on reasonable and probable grounds that the article can not be satisfactorily treated and endangers public health, the Registrar or local medical officer of health may, by order in writing, require that the article be destroyed. 1968, c. 140, s. 19 (1, 2). Destruction

(3) Where a person considers himself aggrieved by an order under subsection 2, he may appeal therefrom to the Tribunal by filing with the Tribunal a notice of appeal within five days after service of the order appealed against, and in relation to the practice and procedure on the appeal, the provisions of sections 12, 13, 14, 15, 16, 17, 18 and 19 apply *mutatis mutandis*. 1968, c. 140, s. 19 (3); 1968-69, c. 135, s. 10 (1). Appeal

(4) Pending an appeal, the appellant shall not dispose of the article forming the subject-matter of the appeal. 1968, c. 140, s. 19 (4). Preservation of article

(5) After giving the appellant an opportunity to be heard, the Tribunal shall confirm, revoke or modify the order appealed against and the appellant shall carry out the order of the Tribunal. 1968, c. 140, s. 19 (5); 1968-69, c. 135, s. 10 (2). Decision of Tribunal

(6) Every order under this section shall be in writing and shall be served upon the appellant together with written reasons for the decision. 1968, c. 140, s. 19 (6). Service of order and reasons

31.—(1) The Registrar or any person designated in writing by him may at all reasonable times enter and inspect, Inspection

- (a) the premises where upholstered or stuffed articles are manufactured or renovated;
- (b) the premises where materials for stuffing are processed;
- (c) the premises where upholstered or stuffed articles are offered for sale,

and such inspection may include the examination of the stuffing in upholstered or stuffed articles by means of reasonably representative sampling.

Off-sale
labels

(2) Where, upon an inspection under subsection 1, the person making the inspection finds that any upholstered or stuffed article is not labelled in accordance with this Act or the regulations, he may affix thereto an off-sale label in the prescribed form, and shall remove the off-sale labels when the labelling is corrected.

Idem

(3) Where, upon an inspection under subsection 1, the person making the inspection has reasonable and probable grounds for believing that stuffing does not comply with section 29 or 30, he,

- (a) may take upholstered or stuffed articles or stuffing for the purposes of testing;
- (b) may affix off-sale labels to the articles or stuffing concerned; and
- (c) shall have the specimens taken tested with all reasonable dispatch. 1968, c. 140, s. 20.

Removal of
off-sale
labels

32.—(1) The Registrar or a person designated in writing by him shall remove an off-sale label,

- (a) that has been affixed under subsection 2 of section 31, when the labelling is corrected; or
- (b) that has been affixed under subsection 3 of section 31, when the tests indicate that sections 29 and 30 do not apply or when those sections have been complied with.

Idem

(2) No person, other than the Registrar or any person designated in writing by him, shall remove an off-sale label that has been affixed under section 31. 1968, c. 140, s. 21.

Preservation
of
off-sale
articles

33.—(1) Subject to subsection 2, no person shall sell, offer to sell, exchange, lease or remove from the premises where it is located, any article placed off-sale under section 31, and such article shall be produced by the person having possession of the article on demand of the Registrar or any person designated in writing by him at any time until the off-sale label is removed by a person authorized by section 32.

Exception

(2) The person having possession of an off-sale article may, with the written consent of the Registrar or any person designated in writing by him, return the off-sale article to his supplier. 1968, c. 140, s. 22.

Duty of
employers

34. Every employer shall take every precaution, reasonable in the circumstances, to ensure that his employees do not contravene this Act or the regulations or any order made under this Act. 1968, c. 140, s. 24.

35.—(1) Any notice or order required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the Department. Service

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing. Idem

(3) Notwithstanding subsections 1 and 2, the Tribunal may order any other method of service in respect of any matter before the Tribunal. 1968-69, c. 135, s. 12, *part*. Exception

36.—(1) Where it appears to the Director that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application, the judge may make such order or such other order as the judge thinks fit. Restraining orders

(2) An appeal lies to the Court of Appeal from an order made under subsection 1. 1968-69, c. 135, s. 12, *part*. Appeal

37.—(1) Except where otherwise provided, every person who, Offence, general

- (a) contravenes this Act or the regulations;
- (b) fails to comply with any order made under this Act; or
- (c) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act,

is guilty of an offence and on summary conviction is liable to a fine of not more than \$500 or, if such person is a corporation, to a fine of not more than \$2,000.

(2) Where a corporation is guilty of an offence under subsection 1, every director or officer who authorized, permitted or acquiesced in the offence is also guilty of an offence and on summary conviction is liable to a fine of not more than \$500. 1968, c. 140, s. 25 (1, 2). Idem

(3) No proceeding under clause *a* or *b* of subsection 1 shall be instituted more than two years after the time when the subject-matter of the proceeding arose. 1968, c. 140, s. 25 (3); 1968-69, c. 135, s. 13, (1). Limitation

(4) No proceeding under clause *c* of subsection 1 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director. 1968, c. 140, s. 25 (4); 1968-69, c. 135, s. 13 (2). Idem

Offence,
obstruction

38. Any person who obstructs, hinders, delays or prevents any person authorized by this Act to enter and inspect any premises or examine any stuffed article is guilty of an offence and on summary conviction is liable to a fine of not more than \$250. 1968, c. 140, s. 26.

Certificate
as evidence

39. A statement as to,

- (a) the registration or non-registration of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or
- (d) any other matter pertaining to such registration, non-registration, filing or non-filing, or to any such person, document or material,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. 1968, c. 140, s. 27; 1968-69, c. 135, s. 14.

Regulations

40. The Lieutenant Governor in Council may make regulations,

- (a) governing applications for registration or renewal of registration and prescribing terms and conditions of registration;
- (b) requiring the payment of fees for any matter connected with registration and prescribing the amounts thereof;
- (c) prescribing the form of labels required or authorized by this Act to be affixed to upholstered and stuffed articles, or any class thereof, and adopting labels affixed under the laws of any other province designated by the regulations;
- (d) prescribing procedures for the taking of samples and the attaching and removal of off-sale labels;
- (e) designating provinces for the purposes of section 28;
- (f) prescribing the processing that shall be used for feathers and feather products used as stuffing;
- (g) prescribing processes for sterilizing and disinfecting for the purposes of section 30;
- (h) prescribing forms for the purposes of this Act and providing for their use;
- (i) requiring registrants to make returns and furnish information to the Registrar;

- (j) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
 - (k) prescribing further procedures respecting the conduct of matters coming before the Tribunal;
 - (l) providing for the responsibility for payment of witness fees and expenses in connection with proceedings before the Tribunal and prescribing the amounts thereof. 1968, c. 140, s. 28; 1968-69, c. 135, s. 15.
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